

922 KAR 1:490. Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements.

RELATES TO: KRS 17.500-17.580, 199.011(6), (9), 199.462(1), 211.684, 600.020(28), (40), (61), (62), 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 671(a)(20), 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(4), 199.640(5), 605.120(5), (6), 605.130(4), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.462(4) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, a caretaker relative, and fictive kin. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including: (1) KRS 605.120(5) and (6) by which the cabinet is authorized to establish a program for kinship care; and (2) KRS 605.130(4) by which the cabinet shall perform such other services as may be deemed necessary for the protection of children. KRS 199.640(5) authorizes the cabinet to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. This administrative regulation establishes background check requirements for caretaker relatives, kinship caregivers, fictive kin, or applicants seeking to provide foster or adoptive services. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions. (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.

(2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:

(a) Investigation or assessment in accordance with 922 KAR 1:330; or

(b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.

(3) "Adolescent member of the household" means a youth who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive services; or

2. A caretaker relative, fictive kin, or kinship caregiver;

(b) Is age twelve (12) through age seventeen (17); and

(c) Is not placed in the home by a state agency.

(4) "Adult member of the household" means an adult who:

(a) Resides in the home of:

1. An individual who applies for approval or has been approved to provide foster or adoptive

services; or

2. A caretaker relative, fictive kin, or kinship caregiver; and

(b) Is eighteen (18) years of age or older.

(5) "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child in the custody of the state under:

(a) 922 KAR 1:350, Family Preparation; or

(b) 922 KAR 1:310, Standards for Child-Placing Agencies.

(6) "Caretaker relative" means a relative with whom the child is, or shall be, placed by the cabinet.

(7) "Child fatality" is defined by KRS 211.684.

(8) "Child-placing agency" is defined by KRS 199.011(6).

(9) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(10) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130.

(11) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).

(12) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.

(13) "Sexual abuse" is defined by KRS 600.020(60).

(14) "Sexual exploitation" is defined by KRS 600.020(61).

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants. (1) An applicant, and each adult member of the household, shall complete a DPP-157, Background Checks for Applicants or Foster/Adoptive Parents, and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;

(c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and

(d) An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant, each adolescent member of the household shall complete a DPP-157 and submit to a child abuse or neglect check conducted by the cabinet.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

(a) Been found by the cabinet to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect;

3. Abused or neglected a child within the seven (7) year period immediately prior to the application; or

4. Had parental rights terminated; or

(b) A matter pending administrative review.

(4) An applicant shall not be approved if:

(a) A criminal records check reveals that the applicant, or adult member of the household, has a:

1. Felony conviction involving:

a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or

b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;

2. Criminal conviction relating to child abuse or neglect; or

3. Civil judicial determination related to child abuse or neglect;

(b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;

2. Been responsible for a child fatality or near fatality related to abuse or neglect; or

3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or

(c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.

(5) An individual identified in accordance with subsection (3) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 3. Procedure for Requesting a Cabinet Child Abuse or Neglect Check, a Criminal Record Check, and an Address Check of the Sex Offender Registry. Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check, a criminal records check, and an address check of the Sex Offender Registry by submitting to the cabinet:

(1) A completed form, DPP-157, including the fee for a criminal background check; and

(2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years.

(3) To the extent resources are available, the department shall post information about other states' child abuse and neglect checks on the department's Web site.

Section 4. Request for a Child Abuse or Neglect Check from Another State. (1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if a:

(a) Completed DPP-157 or DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers, is submitted to the cabinet; or

(b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

(a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and

(b) Waive the fee specified in 922 KAR 1:470.

Section 5. Background Checks Required for a Caretaker Relative and Fictive Kin. (1) A caretaker relative, fictive kin, and each adult member of the household, shall complete a DPP-159 and submit to:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) by the:

1. Kentucky Justice and Public Safety Cabinet; or

2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet;

(c) An address check of the Sex Offender Registry; and

(d) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation if the caretaker relative, fictive kin, or adult household member has lived outside the state of Kentucky during the past five (5) years.

(2) An adolescent member of a caretaker relative's or fictive kin's household shall complete

a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet.

(3) A child abuse and neglect check conducted by the cabinet in accordance with subsection (1)(b) or (2) of this section shall include any finding consistent with Section 2(3) of this administrative regulation.

(4) A caretaker relative or fictive kin shall not be approved if a criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 2(4) of this administrative regulation.

Section 6. Approval. (1) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, approval of an applicant, fictive kin, or caretaker relative who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

- (a) Nature of the offense;
- (b) Length of time that has elapsed since the event; and
- (c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, an applicant, fictive kin, or caretaker relative may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

(a) An adolescent member of the household has:

- 1. Been found by the cabinet to have abused or neglected a child; or
- 2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or

(b) An adult member of the household has:

- 1. Been convicted of a nonviolent felony or misdemeanor;
- 2. Been found to have abused or neglected a child; or
- 3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 7. Reevaluation. (1) An approved foster or adoptive parent and each adult member of the household shall submit annually, prior to or during the anniversary month of initial approval, to:

- (a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;
- (b) A child abuse or neglect check conducted by the cabinet; and
- (c) An address check of the Sex Offender Registry.

(2)(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 2(1)(a) through (d) of this administrative regulation.

(b) If an adult becomes a new member of a kinship caregiver's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 5(1) of this administrative regulation.

(3) If an adolescent becomes a new member of an approved foster or adoptive parent or a kinship caregiver's household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 5(2) of this administrative regulation.

(4) If the cabinet has custody of a child placed with a caretaker relative or fictive kin:

(a) A new adult household member of a caretaker relative or fictive kin shall submit to background checks within thirty (30) calendar days of residence in the household in accordance with Section 5(1) of this administrative regulation; and

(b) A new adolescent household member of a caretaker relative or fictive kin shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 5(2) of this administrative regulation.

5) An annual address check of the Sex Offender Registry shall be completed for a kinship caregiver's eligibility redetermination in accordance with 922 KAR 1:130, Section 13(2).

(6) If an annual address check indicates a match with the Sex Offender Registry, a report of abuse, neglect, or dependency shall be made in accordance with 922 KAR 1:330.

Section 8. Maintenance of Records. (1) A completed copy of each criminal records check conducted pursuant to Section 2 or 7 of this administrative regulation and the DPP-157 shall be maintained on behalf of each:

(a) Applicant;

(b) Foster or adoptive parent; and

(c) Adult member of an applicant or foster or adoptive parent's household.

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent member of:

(a) An applicant's household; or

(b) A foster or adoptive parent's household.

(3) A completed copy of the DPP-159 and criminal records check conducted pursuant to Section 5 or 7 of this administrative regulation shall be maintained for each:

(a) Caretaker relative;

(b) Kinship caregiver;

(c) Fictive kin; and

(d) Adult member of a caretaker relative, fictive kin, or kinship caregiver's household.

(4) A completed copy of the DPP-159 submitted pursuant to Section 5(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent household member of a:

(a) Caretaker relative;

(b) Kinship caregiver; or

(c) Fictive kin.

Section 9. Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

(1) KRS 620.050(5); or

(2) The terms and conditions of:

(a) A release of information signed by the applicant or foster or adoptive parent; or

(b) The agreement between the cabinet and the child-placing agency.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-157, Background Checks for Applicants or Foster/Adoptive Parents", 1/18; and

(b) "DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers", 1/18.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law,

at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (29 Ky.R. 1917; 2709; eff. 5-15-2003; 31 Ky.R. 1460; 1690; eff. 4-22-2005; TAm eff. 10-27-2004; 34 Ky.R. 1895; 2199; 2299; eff. 5-2-2008; 38 Ky.R. 701; 986; eff. 11-16-2011; 44 Ky.R. 439, 1082; eff. 1-5-2018.)